

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of the Petitions of the)	
Verizon Telephone Companies)	
for Forbearance Pursuant to 47 U.S.C.)	WC Docket No. 06-172
§ 160 (c) in the Boston, New York,)	
Philadelphia, Pittsburgh, Providence)	
and Virginia Beach Metropolitan)	
Statistical Areas.)	

**REPLY COMMENTS OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES**

The New Jersey Board of Public Utilities (Board) respectfully submits these Reply Comments in the above referenced docket. The Board agrees with initial commenters that these Petitions should be denied for the reasons stated below.

INTRODUCTION

On September 6, 2006, the Verizon Telephone Companies (Verizon or Company) filed six separate petitions pursuant to 47 U.S.C. § 160 requesting forbearance from certain current regulatory obligations in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas (MSAs). In each of its six Petitions, Verizon requests that the Federal Communications Commission (FCC or Commission) forbear from applying loop and transport unbundling requirements pursuant to Section 251(c) of the Telecommunications Act of 1996 (Act), which allows state regulatory bodies to

establish rates for unbundled network elements (UNEs) utilizing the FCC's Total Element Long Run Incremental Cost (TELRIC) methodology. In addition, the Company seeks forbearance from certain dominant carrier requirements, price cap regulations, and Computer III requirements which includes Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) requirements.

On September 14, 2006, the FCC's Wireline Competition Bureau (Bureau) issued a public notice establishing a pleading cycle for comments on Verizon's Petitions, with comments due on October 30, 2006 and reply comments due on November 29, 2006.¹ On October 18, 2006, the Bureau extended these deadlines giving parties until December 15, 2006 to file comments and until January 29, 2007 to file reply comments.² To address the difficult issues regarding the data in this proceeding and to allow a more complete and well-developed record in this proceeding, the Bureau on December 8, 2006 extended the comment and reply comment deadlines a second time until February 2, 2007 and March 19, 2007, respectively.³ On January 25, 2007, COMPTel filed a Motion for Extension of Time seeking a 30-day extension of the deadlines, which was subsequently granted, and extended the comment period to March 5, 2007 for comments and April 18, 2007 for reply comments.⁴

¹ See *Pleading Cycle Established for Comments on Verizon's Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Public Notice, DA 06-1869 (WCB rel. Sept. 14, 2006).

² See *Wireline Competition Bureau Grants Extension of Time to File Comments on Verizon's Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Public Notice, DA 06-1869 (WCB rel. Oct. 18, 2006).

³ See *Wireline Competition Bureau Grants Extension of Time to File Comments on Verizon's Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Public Notice, DA 06-2483 (WCB rel. Dec. 8, 2006).

⁴ See *Wireline Competition Bureau Grants Extension of Time to File Comments on Verizon's Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Public Notice, DA 07-277 (WCB rel. Jan. 26, 2007).

SUMMARY

The New Jersey Board of Public Utilities opposes the Petitions filed on behalf of Verizon in the above-captioned case and agrees with the conclusion of the initial comments filed on behalf of consumer groups, cities, organizations, competitors and state public utility commissions all of which overwhelmingly oppose the Petitions. The Board is extremely concerned with the deleterious, profound and lasting consequence that approval of Verizon's Petitions would have on the state's competitive providers and ultimately consumers of telecommunications services. Over the past decade, the Board has painstakingly endeavored to establish balanced policies to promote local competition in the state. However, Verizon's Petitions threaten the very foundation and balance that the Board has worked so hard to achieve.

The Board is also concerned because the Company's Petitions are both far reaching and circumvent the recent decisions by the FCC by attempting to reverse the FCC's decision in the Triennial Review Remand Order (TRRO)⁵ which determined that Competitive Local Exchange Carriers (CLECs) were impaired without access to certain unbundled network elements. Rather than relying on the FCC's decision which determined that access to certain UNEs are instrumental to local competition, the Company seeks forbearance from the FCC of this and other current obligations.

If approved by the FCC, current efforts to facilitate local exchange competition and the Board's ability to address inequities at the state level will be eliminated. The Board is concerned because the Petitions cover the majority of the State.

⁵ See *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, WC Docket No. 04-313 and CC Docket No. 01-338, 20 *FCC Rcd* 2533. (rel. Feb. 4, 2005). (TRRO Order).

Two of the six Petitions filed by Verizon, i.e., those that cover the New York and Philadelphia MSAs, will impact 2.7 million households, or 89% of all households, in the State of New Jersey in 16 of the state's 21 counties. In fact, if approved, Verizon's Petitions would impact over 80% of the wire centers and an even higher percentage of lines serving customers in Verizon's service territory. Moreover, approval would severely limit competitive alternatives in regions of the state where consumers can least afford it, including the city of Camden where almost 41.0% of the families living in the city have incomes below the poverty line.

COMMENTS

In its Petitions, Verizon seeks what it describes as "substantially the same regulatory relief that the Commission granted [to Qwest Communications for the Omaha MSA] in the *Omaha Forbearance Order*."⁶ However, nothing in the Company's Petitions is similar to what was granted in Omaha.⁷ The National Association of State Utility Consumer Advocates (NASUCA) has clearly demonstrated in its initial comments that Verizon's Petitions misrepresents the FCC's decision and requests far greater forbearance than was contemplated in the Omaha Order.⁸ As a matter of fact, the Company's request is overarching, potentially affecting tens of millions of consumers as compared to the Commission's Omaha Order where only 9 of 24 wire centers were granted relief.

⁶ See *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 USC § 160 (c) in the New York Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006) (NY Petition) at 1 n.2. For purposes of clarity, we will refer to the NY Petition, although our comments are not limited to the NY Petition solely to the extent Verizon requests identical relief in each of its six petitions.

⁷ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 04-223, 20 FCC Rcd 19415 (2005), *appeal pending*, *Qwest Corp. v. FCC & USA*, No. 04-1450 (D.C. Cir. filed Dec. 12, 2005). (Omaha Order)

⁸ Comments of the National Association of State Utility Consumer Advocates, et al. (March 5, 2007) (NASUCA) at 13.

Far broader than in the Omaha Order, Verizon's forbearance request seeks to address the Commission's concerns by suggesting that the relief sought is more appropriate because "competition ... is more advanced [in the areas where relief is requested] than it was in Omaha."⁹ However, the Board is concerned, like all the other commenters, that approval of Verizon's requests may have deleterious, profound and lasting consequences on the state of local competition.

In support of its Petitions, the Company argues that it "faces competition from a wide range of technologies and an even broader array of providers" which are available to both mass market and enterprise customers.¹⁰ However, examination of the Initial Comments in this proceeding reveals not only has Verizon not provided sufficient data to support these claims, but the Company has overstated the existence of actual competitors throughout the MSAs where relief is being sought.¹¹ The Company has not met its burden of proof to demonstrate that it has satisfied the forbearance standards.¹²

The Board joins with the countless commenters that raised concerns with Verizon's data gathering, analysis and conclusions arrived at in its Petitions. Setting aside the impropriety of utilizing unauthorized E911 data that the Company has in its control as administrator,¹³ the Company fails to focus its analysis in any meaningful way. Instead of performing an assessment on a more granular basis, such as wire centers which would more accurately illustrate the extent of competitive alternatives across an MSA, the Company provides data

⁹ NY Petition at 1.

¹⁰ *Id.*

¹¹ *See Comments of Comcast Corporation* (March 5, 2007) (Comcast) at 3-4; *Comments of the City of Philadelphia* (March 5, 2007) (City of Phila.) at 9-10.

¹² NASUCA at 4.

¹³ *See Opposition of COMPTTEL* (March 5, 2007) (COMPTTEL) at 3.

that shows the percentage of *Verizon* customers located in wire centers where an alternative provider has at least one customer.¹⁴ We agree with Comcast and caution the Commission not to rely upon such carefully worded statements which are deceptive. Further supporting the findings of the other commenters, NASUCA found that the Company's "Petitions [are] either based on speculation and expectations rather than determinative proof or sufficiently granular to demonstrate the presence of alternatives for consumers."¹⁵

More alarming, however, is Comptel's revelation of Verizon's reliance on data from December 2005 which fails to remove MCI from the equation even though MCI is now part of Verizon.¹⁶ Not only is the use of out-dated data of concern to the Board because it may not reflect the current marketplace, Verizon appears to overstate the presence of a competitor against which it no longer has to compete.

All in all, the lack of sufficient, verifiable data does not permit the Commission to determine the extent of competition that is actually occurring throughout each MSA and whether the competition is substantial enough to constrain Verizon from exerting market power. The Petitions may be read by some to suggest that flourishing competition, if left unchecked could overtake Verizon and this is not the case. The state regulatory commissions of Delaware,¹⁷ Virginia,¹⁸ and Pennsylvania,¹⁹ as well as COMPTTEL all correctly raise the lack of sufficient evidence as reasons to deny Verizon's request for forbearance.

¹⁴ Comcast at 5 n.14.

¹⁵ NASUCA at 4.

¹⁶ COMPTTEL at 12.

¹⁷ See *Comments of the Delaware Public Service Commission* (February 28, 2007).

¹⁸ See *Comments of the Virginia State Corporation Commission* (December 15, 2006) (Va SCC).

¹⁹ See *Comment of the Pennsylvania Public Utility Commission* (March 5, 2007) (PaPUC).

In addition, rather than focusing on instances where forbearance might be appropriate, the Company relies upon data where some limited competition might exist and then concludes that competition is present throughout the entire MSA. Instead of performing a proper economic analysis, the Company merely recites its now familiar mantra that it is facing an ever increasing amount of competition. Verizon offers as evidence little more than the fact that its exchange lines have decreased in number, a theory which has been refuted by numerous commenters.

In fact, Sprint/Nextel found that much of the line loss relied upon by Verizon in its Petitions are not competitive losses of primary telephone lines at all, but rather the result of line loss from secondary lines, lines that customers had subscribed to prior to the prevalence of wireless, DSL and cable modems whose primary functions were not to provide primary voice telephone service.²⁰ The Board agrees with Sprint/Nextel that line losses have to be viewed in the proper perspective. Line gains due to technological innovations such as fax machines and secondary lines which occurred many years ago to connect a computer to the Internet should not necessarily enter into the equation.

More importantly, the Commission must recognize that the Company may also be the beneficiary of its own line loss. If a customer elects to eliminate a secondary land line in favor of wireless service, the odds are good that Verizon will lose a wireline customer, but gain a wireless customer- at a much higher rate. The same is true if a customer replaces a dedicated computer line with DSL or the Company's FiOS Internet offering.²¹ The Company must not be allowed to use its past success in providing secondary lines to squeeze out its competition for primary voice service because of competitive alternatives for secondary lines.

²⁰ See *Sprint Nextel Corporation's Opposition to Petitions for Forbearance* (March 5, 2007) (Sprint/Nextel) at 13.

²¹ City of Phila. at 16-17.

In its comments, Sprint/Nextel clearly demonstrated that the secondary lines for such devices fueled the growth in additional lines that Verizon now claims as competitive losses. Verizon cannot dismiss the role of secondary lines and attribute it to “competition” for primary voice services. The Company is experiencing the natural economic consequences associated with products that have entered the latter part of their life cycle and are being replaced by newer, faster and potentially better product offerings. However, the Company acknowledges, in its March 13, 2007 press release, that “[t]he traditional landline is still the anchor for home communications.”²²

NASUCA also raises another notable concern that the FCC must consider regarding the trend toward competitors only providing bundles of service which tie the provision of basic service and calling features neatly together as a “base” offering with no standalone basic service offering. If approved, Verizon’s Petitions have the real potential to eliminate consumer choice for, what it describes as, non-bundled local exchange services, which could lead to reduced competitive alternatives and anti-competitive abuse by the Company.²³ Said another way, forbearance as requested by the Company will almost certainly lead to increased cost to CLECs making it uneconomic for them to provide stand-alone basic service. The former UNE-P rates for CLECs have increased under commercial agreements with Verizon with the elimination of local switching. Therefore, the “competition” will likely be limited to packaged offerings that include features and functions that not all consumers want at rates that far exceed the current Verizon offering in New Jersey.²⁴

The Board also agrees with states such as Virginia that point out that they believe that action on the Company’s Petition is premature in light of recent

²² See Press Release, *Verizon Offers Best FiOS Prices Yet for Tampa-Area Customers*, March 13, 2007.

²³ NASUCA at 6.

²⁴ See, e.g. NASCUA at 57, Table 2. .

conditions imposed by the FCC and state regulatory agencies in approving the Verizon/MCI merger. The Board shares Virginia's concerns and urges the FCC to allow the merger conditions to be fully implemented prior to considering changes that may negatively impact the market for wholesale and retail telecommunications services. Even after the merger conditions expire, the FCC should be cognizant that the implications of the expiring conditions will not be known for many more months, if not years. To be sure, there is more potential harm to consumers and competitive providers if the Commission errs by providing forbearance prematurely. Verizon has made no definitive correlation between the regulations it requests to have eliminated and its current position in the market. In fact, contrary to the Company's arguments, consideration of Verizon's Petitions is not about the survival of Verizon, but rather is about the survival of competition.

In approving the Verizon/MCI merger, the Board acknowledged not only the benefits of the merger, but also the potential harm that could result.²⁵ In its Merger Order, the Board determined that the benefits of the merger were not equal throughout all market segments across the state because "many of the competitors that find it worthwhile and profitable to cater to the largest business customers are not inclined to serve smaller businesses, even if they are capable of do so from a technical point of view."²⁶ In addition, the Board was concerned that the overlap of Verizon and MCI's wholesale transport and loop networks might reduce competition in certain areas.²⁷ Therefore in order to serve the public interest, and allow the competitive process to achieve equilibrium, it was necessary to place certain conditions upon its approval.²⁸ By conditioning

²⁵ See *In the Matter of the Joint Petition of Verizon Communications Inc. and MCI, Inc. for Approval of Merger, Order of Approval*, Docket No. TM05030189 (April 12, 2006). (BPU Merger Order) at 36.

²⁶ BPU Merger Order at 31-32.

²⁷ BPU Merger Order at 33.

²⁸ "In order to ensure that any enterprise market concentration resulting from this merger does not harm the competitive wholesale (and therefore retail) environment in New Jersey, we hereby

approval, the Board acknowledged that competition is a fluid process that impacts carriers and consumers both directly and indirectly and at times requires safeguards. The Company cannot be allowed to game the system by first merging with one of its largest competitors, agreeing to the conditions and then pushing aside its remaining competitors by seeking elimination of the rules which are so vital to competition.

State and federal policies have successfully encouraged innovation and the introduction of new products and services by working within the parameters of the existing system. The need to continue to promote all forms of competition to ensure the availability of competitive alternatives to consumers continues and should not be eliminated at a time when industry consolidation continues to be the trend. Consumers must continue to have a genuine choice in providers.

The Board is concerned that granting Verizon's Petitions would reduce consumer choice as clearly set forth in Virginia's comments.²⁹ Two of the six Petitions filed by Verizon, i.e., those that cover the New York and Philadelphia MSAs, will impact 2.7 million households in the State of New Jersey in 16 of the state's 21 counties. In fact, if approved Verizon's Petitions would impact over 80% of the wire centers and an even higher percentage of lines serving customers in Verizon's service territory. Moreover, approval would severely limit competitive alternatives in regions of the state where consumers can least afford it, including the city of Camden where almost 41% of the families residing in the city have incomes below the poverty line. As clearly articulated by the City of Philadelphia, "low income individuals and families depend on traditional telephone service

order that Verizon must implement its commitment to the FCC to not seek any increase in New Jersey approved rates for unbundled network elements for a period of two years from the merger closing date. Moreover, we order that the combined entity must not increase rates paid by MCI's existing customers (as of the merger closing date) for the DS1 and DS3 (i.e. high capacity) wholesale metro private line services that MCI provides in Verizon's incumbent local telephone company service areas above their level of the merger closing date for a period of 2.5 years." BPU Merger Order at 37.

²⁹ Va. SCC at 3.

because they cannot afford the costly service packages – upwards of \$100.00 per month- by which voice over cable service is marketed. Without competition among providers of traditional telephone service, telephone costs will increase for such low income consumers.”³⁰

The City of Philadelphia also states that, “... a large segment of Philadelphia’s population cannot afford to switch to wireless or other alternative services in place of Verizon’s traditional wireline service.”³¹ In light of the fact that statistically the city of Camden has a significantly larger proportion of its families with incomes below the poverty line than Philadelphia (40.7% vs. 19.9%), the impact of forbearance could be considerably worse in Camden.

The Board has taken steps to bring the benefits of competition to the residential and business customers of this state. In order to accomplish the earlier results it was necessary for the Board to take targeted actions. Sometimes the required course was to reassess wholesale rates, while at other times it required relinquishing regulatory control over rates, terms and conditions of certain regulated services to allow market forces to take hold and to promote entry by competing providers. Both approaches helped to shape the New Jersey market. However, at each step, the Board carefully looked at all the available data and options and took measured steps in an effort to assess the impact on all areas of the state and all market segments. In its Instant Petitions, the Company presents the FCC with scant and anecdotal evidence and asks the Commission to make a finding that only benefits the Company.³²

³⁰ City of Phila. at 13-14.

³¹ *Id.* at 27.

³² Rather than rely on unreliable data, the Board is in the process of revising its rules related to carrier reporting requirements which it intends to use to track and analyze the continued development of local competition in the state. The rules which have been proposed would require all carriers that provide local service to submit specific data on a granular basis which would enable the Board to take the guesswork out of future policy decisions by utilizing actual data.

However, recent decisions at the federal level have had a chilling effect on competitors in New Jersey. None of which are more illustrative than the FCC's recent TRRO Order.³³ The trend will continue with the approval of Verizon's Petitions. In the TRRO, the Commission determined, among other things, that Competitive Local Exchange Carriers (CLECs) were not impaired without access to unbundled local switching. The result was a loss of what had become known as the UNE-P or the Unbundled Network Element Platform. In promoting the TRRO, the FCC stated that a primary benefit of its decision would be to encourage carriers to invest in their own facilities. The result of that decision, however, is unfortunately, a reduction in competitive alternatives for consumers.

Since the release of the TRRO, the FCC's own data shows that nationally incumbent local exchange carriers (ILECs) are providing 22% fewer UNE-P facilities; CLEC access lines have declined by 28% from June 2005 to June 2006; and a large percentage of competitors, (i.e., 42.1% of all CLECs) still rely on ILEC facilities to provide service.³⁴ Forbearance from the FCC's rules will surely have dire consequences on the overall market for alternative competitive telecommunications services.

A recent informal survey of the state's local exchange carriers by the Board's Staff reveals that Verizon's share of the local exchange market segment remains strong in New Jersey. Based upon the information received from the reporting carriers, Verizon provides service to the vast majority of customers. More important, however, is the fact that the CLECs almost exclusively rely on Verizon to provide some or all of the facilities they use to provide service to their limited customer base either through resale, UNE-L or commercial agreements which contain a product that replaces UNE-P (at higher rates).

³³ *Infra* at n.5

³⁴ See Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau (January 2007) at 2.

Two such carriers who provided initial comments to the FCC that operate in New Jersey, Monmouth Telephone & Telegraph, Inc. and Cavalier Telephone Corporation, have expressed serious concerns regarding the impact of forbearance on their operations. (Cavalier at 2, Monmouth at 3) It is clear to this Board that other CLECs operating in the state face similar obstacles. These facts make it critical that competitors continue to have access to Verizon's network at affordable rates; otherwise it is inevitable that many of these providers will be forced to cease operations and consumers in New Jersey will suffer.

The Board concurs with the City of Philadelphia where it states, "[i]f the Commission grants the forbearance Verizon requests, the direct consequence will be to eliminate or severely weaken the one class of competitors in the Philadelphia MSA which is known with certainty to provide competition to Verizon: CLECs using unbundled network elements that are the subject of the Verizon Petition. If Verizon is no longer required to offer such unbundled elements pursuant to the federal regulatory framework, it will be able to deny them service altogether or to establish a pricing structure that will render them uncompetitive and force them out of the marketplace. The effect will be to eliminate the only fully verifiable and measurable competition to Verizon in the Philadelphia MSA."³⁵ The results will be even more devastating to the 2.7 million households in New Jersey affected by these Petitions.

Conclusion

Based upon the foregoing, Verizon has not met its burden of proof and its Petitions must be denied.

³⁵ City of Phila. at 25.

Respectfully submitted,

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DATED: April 18, 2007

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